



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Whether Land Located in the
Town of Sand Creek, Dunn County, and Owned by
Steven G. and Lynda M. Larson Shall be
Withdrawn as Forest Cropland

Case No.: IH-01-03

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Department of Natural Resources on its own motion has investigated and requested a hearing to determine whether 4 acres of land located in the NESE of S20, T3 1, RI I W, Town of Sand Creek, Dunn County, Wisconsin should be withdrawn as Forest Cropland under Wis. Stat. § 77. 10. The Department alleges that the parcel no longer constitutes a tract of land of 40 or more acres, an entire quarter quarter section, a fractional lot or a government lot as required by Wis. Stat. §§ 77.02(1) and 77. 10(1), (1969-70), and Wis. Admin. Code § NR 46.07(f).

On April 17, 2001, the Department of Natural Resources filed a Request for Hearing with the Division of Hearings and Appeals. Pursuant to due notice hearing was held on August 24, 2001, at Menomonie, Wisconsin, Jeffrey D. Boldt, administrative law judge (the ALJ) presiding.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Natural Resources, by

Attorney Edwina Kavanaugh
P. O. Box 7921
Madison, WI 53707-7921

Lynda and Steven Larson
E 8019 1325 Avenue
Ridgeland, WI 54763

The Division of Hearings and Appeals adopts the following Findings:

ADOPTED FINDINGS OF FACT

1. The Department of Natural Resources on its own motion filed a Request for Hearing with the Division of Hearings and Appeals seeking cancellation of the designation as Forest Cropland under Wis. Stat. § 77.10(1) of this 4 acres of land in the NESE S20, T31N, R11W, Town of Sand Creek, Dunn County, Wisconsin. A hearing was scheduled for July 31, 2001, and later rescheduled to August 24, 2001.
2. Upon application for entry dated August 28, 1970 (Ex. 3), landowner Stephen H. Halpin sought entry as Forest Cropland for a tract of 158 acres—the above 4 acres in the NESE and 154 acres in other quarter sections than the SE quarter section. The 4 acres at issue did not constitute an entire quarter quarter section, but was eligible for entry because it was part of the 158 acres constituting a tract of land of 40 or more acres as required by Wis. Stat. § 77.01(1) before statutory changes effective April 30, 1972 restricting entries to entire quarter quarter sections, fractional lots, and governmental lots (Ex. 24).
3. On February 9, 1971 the Department issued Order No. FC2873 (Ex. 4) entering the 158 acres as Forest Cropland effective tax year 1971 as provided by Wis. Stat. § 77.02(3) in effect at that time (Ex. 24).
4. On July 29, 1982, after receiving a Transfer of Ownership form (Ex. 6) dated June 26, 1982 from Stephen H. Halpin to Keith and Joan M. Ewings, the Department issued Notice of Transfer No. T-1309 (Ex. 6) under Wis. Stat. § 77.10(1)(b).
5. On May 7, 1998 the U.S. Marshall sold the land at issue to Four Star Properties in a federal court foreclosure action on an FMHA mortgage (Exs. 8, 9, 11).
6. On May 8, 1998 Four Star Properties entered into a land contract (Ex. 10) with the Larsons conveying to them the NESE and SESE of Section 20.
7. On July 20, 1998 the Department received a Transfer of Ownership form from Keith and Joan M. Ewings to Four Star Properties, a corporation. Attached to the form was an order of the United States District Court for the Western District of Wisconsin (Ex. 11) confirming sale of the designated land in compliance with a judgment of foreclosure.
8. On July 22, 1998, the Department issued FCL Transfer Order No. T-5174 (Ex. 12) transferring said land from Keith Ewings and Joan M. Ewings to Four Star Properties pursuant to Wis. Stat. § 77.10(1)(b).
9. On September 17, 1998 Four Star Properties assigned its interest in its land contract with the Larsons to First Trust Corporation (Ex. 15).
10. By warranty deed (Ex. 16) filed April 5, 1999, the Larsons satisfied their land contract for the NESE and SESE of Section 20, including the 4 NESE acres that had been entered as Forest Cropland Law by Order No. FC2873. In the acreage purchased by the Larsons, the only acreage that had been entered as Forest Croplands was the 4 NESE acres.

11. The warranty deed (Ex. 16) transferred title for the 4 NESE acres previously entered as Forest Cropland, but did not transfer title to any of the remaining 154 acres that had been entered into Forest Croplands with the 4 acres at issue.

12. Because the 4 acres is no longer part of a tract of land of 40 or more acres, an entire quarter quarter section, a fractional lot, or a government lot entered as Forest Cropland as required by Wis. Stat. § 77.01(1), it is ineligible under Wis. Stat. § 77.10 to continue as Forest Cropland.

13. The Larsons declined to withdraw the 4 acres voluntarily.

14. The facts demonstrate that the 4-acre property at issue is ineligible to continue as forest cropland under Wis. Stat. § 77.01(1) and is subject to cancellation of its designation as Forest Cropland under Wis. Stat. § 77.10(1).

ADDITIONAL FINDINGS

15. From the record developed at hearing, it appears that the Larsons did not understand that they were purchasing any land enrolled in the Forest Cropland program at the time of the sale. The land contract deed specifically referenced the property as being subject to the provisions of the Forest Cropland program. (Ex. 10) However, the Larsons testified credibly that they were told none of the property they were purchasing was Forest Cropland. The Larsons purchased a house and 20 acres of land, and only four of those acres were from a quarter section entered as Forest Cropland.

16. The Division does not have authority to fashion an equitable remedy to reflect the fact that the Larsons did not knowingly violate any rule of the Forest Cropland program. However, to the extent the Department has any discretion in assessment and collection of back-taxes, it would be appropriate to give any available break to the Larsons under these circumstances.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority to hear contested cases and enter necessary Orders relating to withdrawal of Forest Croplands pursuant to Wis. Stat. §§ 227.43 and 77.10.

2. To be eligible for entry or continued participation in the Forest Cropland program, the owner must practice forestry on “an entire quarter quarter section” of land. Wis. Stat. § 77.02(1) When a portion of the subject quarter section of the land was conveyed by warranty deed to the Larsons, that parcel lost its eligibility as Forest Cropland.

3. Lands which cannot meet the eligibility requirements of Wis. Stat. § 77.02(1) and Wis. Admin. Code § NR 46.06 are “ineligible lands” within the meaning of Wis. Admin. Code § NR 46.07(f).

ORDER

Pursuant to the foregoing Findings of Fact, NOW IT IS HEREBY ORDERED that the land described above owned by Steven and Lynda Larson is withdrawn from entry under the Forest Crop law.

IT IS FURTHER ORDERED that the tax due by the owner (as determined by the Wisconsin Department of Revenue) and interest thereon shall be paid to the Department of Natural Resources pursuant to Wis. Stat. § 77.10(1)(a).

IT IS FURTHER ORDERED that a copy hereof be transmitted forthwith by the DNR to the Wisconsin Department of Revenue, to the Clerk of the Town of Sand Creek, to the Register of Deeds of Dunn County and the Supervisor of Assessments of the property tax assessment district wherein the land is located.

Dated at Madison, Wisconsin on September 21, 2001.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
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By: _____
Jeffrey D. Boldt
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.